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OFFICE OF PETITIONS

In re Application of
Amey et al.
Application No. 10/659,644
Filed: September 10, 2003
Attorney Docket No. PI1220USDIV

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed May 2, 2006.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This application became abandoned for failure to timely submit the issue fee, as required by the Notice of Allowance and Fee (s) Due, which were mailed April 15, 2004. The Notice of Allowance and Issue Fee (s) Due set a three (3) month period for reply. Accordingly, this application became abandoned on July 16, 2004. A Notice of Abandonment was mailed on August 17, 2004.

Petitioner asserts that the Notice of Allowability mailed April 2, 2004 was never received. In support, petitioner has provided a copy of the docket record where the Notice of Allowance would have been entered had the Notice been received.

A review of the record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office

communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Notice may have been lost after receipt rather than a conclusion that the Notice was lost in the mail.

Petitioner's evidence has been considered but deemed as unpersuasive. A review of the record shows the Notice of Allowance and Fee(s) Due was mailed to the correspondence address of record. The correspondence address of record continues to be the following:

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4417 LANCASTER PIKE
WILMINGTON DE 19805.

A review of the petition shows that the address provided on the petition differs from the correspondence address of record. The petition address is listed as follows:

Invista North America S.A. R.L
4417 Lancaster Pike
Legal-Bldg. 722/WR1032
Wilmington, DE 19850.

As such the record is not clear that the Notice of Allowance and Fee(s) due was not received due to a failure to change the correspondence address of record. The address differs enough that it is conceivable that correspondence addressed with the correspondence address of record would not be delivered. Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c). Nor would the failure to promptly change the correspondence allow for withdrawing the holding of abandonment.

¹M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioner authorized the charging of the issue and publication fees. However, the fees could not be charged because the credit card submitted was expired.

In the alternative, petitioner may wish to file a petition under 37 CFR 1.137.


By mail: **Mail Stop Petition**
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.


Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Invista North America S.A. R.L
4417 Lancaster Pike
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